

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DURAN IRVIN,)
Plaintiff,)
)
v.) C.A. No. 04-10391-EFH
)
ANDREA CABRAL, Sheriff and)
MARY ELLEN MASTRORILLI,)
Superintendent,)
Defendants.)

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff's Application to Proceed Without Prepayment of Fees is denied without prejudice to refiling with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order. The Clerk will be directed to (1) send plaintiff a new Application to Proceed Without Prepayment of Fees; and (2) forward a copy of this Memorandum and Order to the authorities at the Suffolk County Jail and House of Correction.

BACKGROUND

On February 23, 2004 plaintiff, now incarcerated at the Suffolk County House of Correction, filed a civil rights complaint concerning the defendants' alleged denial of his inmate marriage request. See Docket No. 2. Because his complaint was filed without payment of the filing fee or an Application to Proceed Without Prepayment of Fees, on March 31, 2004, plaintiff was granted additional time to do so. See

Docket No. 3. At that time, plaintiff was advised that, among other things, prisoners are required to pay the full amount of the filing fee pursuant to 28 U.S.C. § 1915(b)(1). Id.

On April 13, 2004, plaintiff filed an Application to Proceed Without Prepayment of Fees. See Docket No. 4. Although the Application indicates that plaintiff has no source of income and no funds, he failed to attach a certified copy of his inmate account statement. Id.

DISCUSSION

Although plaintiff has submitted an Application to Proceed Without Prepayment of Fees as required under Section 1915(a)(1), he has not provided the required certified copy of his trust fund account statement at the Suffolk County Jail and House of Correction as required by Section 1915(a)(2). See 28 U.S.C. § 1915 (a)(1), (a)(2).¹

To enable this Court to calculate the amount that plaintiff must initially pay pursuant to Section 1915(b)(1), a copy of this Memorandum and Order will be sent by the Clerk to

¹If plaintiff submits a certified copy of his prison account statement, the Court will direct the appropriate prison official to withhold from plaintiff's prison account and pay to the Court an initial payment towards the \$150.00 filing fee. The appropriate prison official will also be directed to collect monthly payments from plaintiff's prison account on a continuing basis until such time as the \$150.00 statutory filing fee is paid in full. Id.

the Treasurer's Office at the Suffolk County Jail and House of Correction so that a certified copy of the trust account statement² may be promptly prepared and forwarded to:

Honorable Edward H. Harrington
United States District Court
District of Massachusetts
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

The Clerk will also send a copy of this Memorandum and Order to plaintiff along with a copy of the prescribed Application To Proceed Without Prepayment of Fees and Affidavit.

ORDERS

Based upon the foregoing, it is hereby ORDERED

1. Plaintiff's Application to Proceed Without Prepayment of Fees (Docket No. 3) is denied without prejudice to prejudice to refiling with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order.
2. If plaintiff wishes to proceed with this action, he shall file, within forty-two (42) days of the date of this Memorandum and Order, an Application to Proceed Without Prepayment of Fees accompanied by a certified copy of his institutional account

²The trust account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint should include information to enable the Court to calculate an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint. See 28 U.S.C. § 1915((b)(1).

statement. The Clerk shall send plaintiff an Application to Proceed Without Prepayment of Fees and Affidavit with this Order.

3. The Clerk shall send a copy of this Memorandum and Order to the Treasurer's Office at the Suffolk County Jail and House of Correction so that a copy of plaintiff's account statement³ may be promptly prepared and forwarded to:

Honorable Edward F. Harrington
United States District Court
District of Massachusetts
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210.

4. If plaintiff fails to timely file a new Application to Proceed Without Prepayment of Fees accompanied by a certified copy of his prison account statement, this action will be subject to dismissal without prejudice for failure to pay the filing fee.

SO ORDERED.

Dated at Boston, Massachusetts, this 24th day of August, 2004.

/s/ Edward F. Harrington
EDWARD F. HARRINGTON
UNITED STATES DISTRICT JUDGE

³The trust account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint should include information to enable the Court to calculate an initial partial filing fee of 20 percent of the greater of (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint. See 28 U.S.C. § 1915((b)(1).